

**EXHIBIT B Continued - PART 3**

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Attorneys for Defendants  
JOHNSON & JOHNSON, MCNEIL CONSUMER  
HEALTHCARE, a Division of MCNEIL-PPC, INC.  
(erroneously sued as MCNEIL CONSUMER &  
SPECIALTY PHARMACEUTICALS,  
a Division of MCNEIL-PPC, INC.), MCKESSON  
CORPORATION, and WAL-MART STORES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO

THOMAS B. GAINES, a deceased minor  
child by and through his personal  
representative(s) and/or successor(s) in  
interest; DIANA L. GAINES, individually,  
as Executor of the Estate of Thomas B.  
Gaines; and as Thomas B. Gaines' personal  
representative and successor in interest;  
GARY D. GAINES, individually and as  
Thomas B. Gaines' personal representative  
and successor in interest; and THE  
ESTATE OF THOMAS B. GAINES,

Plaintiffs,

v.

JOHNSON & JOHNSON, a New Jersey  
corporation; MCNEIL CONSUMER &  
SPECIALTY PHARMACEUTICALS, a  
Division of MCNEIL-PPC, INC., a New  
Jersey corporation; MCKESSON  
CORPORATION, a Delaware corporation;  
WAL-MART STORES, INC., a Delaware  
corporation; and DOES 1 through 100,  
inclusive,

Defendants.

Case No. CGC-06-457600

**[PROPOSED] ORDER GRANTING  
DEFENDANT JOHNSON &  
JOHNSON'S MOTION TO COMPEL  
FURTHER RESPONSES TO FIRST  
SET OF SPECIAL  
INTERROGATORIES, FIRST  
REQUEST FOR PRODUCTION, FIRST  
SET OF FORM INTERROGATORIES,  
AND FIRST SET OF REQUESTS FOR  
ADMISSIONS**

///

1 Defendant Johnson & Johnson's Motion to Compel further responses to its First  
 2 Set of Special Interrogatories, First Request for Production, First Set of Form  
 3 Interrogatories, and First Set of Requests for Admissions came on for hearing before this  
 4 Court on May 7, 2007. The Court, the Commissioner Bruce Chan presiding, having  
 5 heard argument and considered the pleadings filed by counsel, and for good cause shown,  
 6 hereby orders that the Motion is GRANTED.

7 1. Plaintiffs' responses to Defendant's First Set of Special Interrogatories,  
 8 First Request for Production, First Set of Form Interrogatories, and First Set of Requests  
 9 for Admissions were untimely, and Plaintiffs' objections contained therein are deemed  
 10 waived.

11 2. Within \_\_\_\_\_ days of Notice of Entry of this Order, Plaintiffs shall  
 12 provide full and complete responses to Special Interrogatories numbers 12-13 and 18-19,  
 13 Form Interrogatory number 17.1, and Request for Production numbers 3, 9, and 12, and  
 14 shall additionally produce all documents responsive to Request for Production numbers 3,  
 15 9, and 12.

16 3. Within \_\_\_\_\_ days of Notice of Entry of this Order, Plaintiffs shall serve  
 17 signed and verified discovery responses to Defendant's First Set of Special  
 18 Interrogatories, First Request for Production, First Set of Form Interrogatories, and First  
 19 Set of Requests for Admissions.

20 **IT IS SO ORDERED.**

21  
 22  
 23 Dated:

24 Hon. Bruce E. Chan  
 25 Commissioner of the Superior Court  
 26  
 27  
 28

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1 CHARLES F. PREUSS (State Bar No. 45783)  
2 THOMAS W. PULLIAM, JR. (State Bar No. 46322)  
3 BENJAMIN J. HOLL (State Bar No. 200630)  
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ENDORSED  
FILED  
San Francisco County Superior Court

MAR 29 2007

GORDON PARK-LI, Clerk  
BY: BERNADETTE THOMPSON  
Deputy Clerk

Attorneys for Defendants  
JOHNSON & JOHNSON, MCNEIL CONSUMER  
HEALTHCARE, a Division of MCNEIL-PPC, INC.  
(erroneously sued as MCNEIL CONSUMER &  
SPECIALTY PHARMACEUTICALS,  
a Division of MCNEIL-PPC, INC.), MCKESSON  
CORPORATION, and WAL-MART STORES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO

THOMAS B. GAINES, a deceased minor  
child by and through his personal  
representative(s) and/or successor(s) in  
interest; DIANA L. GAINES, individually,  
as Executor of the Estate of Thomas B.  
Gaines, and as Thomas B. Gaines' personal  
representative and successor in interest;  
GARY D. GAINES, individually and as  
Thomas B. Gaines' personal representative  
and successor in interest; and THE  
ESTATE OF THOMAS B. GAINES,

Plaintiffs,

v.

JOHNSON & JOHNSON, a New Jersey  
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Division of MCNEIL-PPC, INC., a New  
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CORPORATION, a Delaware corporation;  
WAL-MART STORES, INC., a Delaware  
corporation; and DOES 1 through 100,  
inclusive,

Defendants.

Case No. CGC-06-457600

**CERTIFICATE OF SERVICE**

Date: May 7, 2007  
Time: 10:30 a.m.  
Place: Department 610  
Judge: Commissioner Bruce E. Chan

Complaint Filed: November 3, 2006

**CERTIFICATE OF SERVICE**

I, GLORIA CADENA, declare that:

I am at least 18 years of age, and not a party to the above-entitled action. My business address is 50 Fremont Street, 20th Floor, San Francisco, California 94105, Telephone: (415) 591-7500.

On March 29, 2007, I caused to be served the following document(s):

1. **DEFENDANT JOHNSON & JOHNSON'S NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO FIRST SET OF SPECIAL INTERROGATORIES, FIRST REQUEST FOR PRODUCTION, FIRST SET OF FORM INTERROGATORIES, AND FIRST SET OF REQUESTS FOR ADMISSIONS;**

2. **DEFENDANT JOHNSON & JOHNSON'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO FIRST SET OF SPECIAL INTERROGATORIES, FIRST REQUEST FOR PRODUCTION, FIRST SET OF FORM INTERROGATORIES, AND FIRST SET OF REQUESTS FOR ADMISSIONS;**

3. **DEFENDANT JOHNSON & JOHNSON'S SEPARATE STATEMENT OF ITEMS IN DISPUTE IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO FIRST SET OF SPECIAL INTERROGATORIES, FIRST REQUEST FOR PRODUCTION, FIRST SET OF FORM INTERROGATORIES, AND FIRST SET OF REQUESTS FOR ADMISSIONS;**

4. **DECLARATION OF BENJAMIN J. HOLL IN SUPPORT OF DEFENDANT JOHNSON & JOHNSON'S MOTION TO COMPEL FURTHER RESPONSES TO FIRST SET OF SPECIAL INTERROGATORIES, FIRST REQUEST FOR PRODUCTION, FIRST SET OF FORM INTERROGATORIES, AND FIRST SET OF REQUESTS FOR ADMISSIONS;**

5. **[PROPOSED] ORDER GRANTING DEFENDANT JOHNSON & JOHNSON'S MOTION TO COMPEL FURTHER RESPONSES TO FIRST SET OF SPECIAL INTERROGATORIES, FIRST REQUEST FOR PRODUCTION, FIRST SET OF FORM INTERROGATORIES, AND FIRST SET OF REQUESTS FOR ADMISSIONS.**

1 by enclosing a true copy of (each of) said document(s) in (an) envelope(s), addressed as  
2 follows:

3 ☒ BY MAIL: I am readily familiar with the business' practice for collection and  
4 processing of correspondence for mailing with the United States Postal Service. I  
5 know that the correspondence is deposited with the United States Postal Service on  
6 the same day this declaration was executed in the ordinary course of business. I  
7 know that the envelope was sealed, and with postage thereon fully prepaid, placed  
8 for collection and mailing on this date, following ordinary business practices, in the  
9 United States mail at San Francisco, California.

10 ☐ BY PERSONAL SERVICE: I caused such envelopes to be delivered by a  
11 messenger service by hand to the address(es) listed below:

12 ☐ BY OVERNIGHT DELIVERY: I enclosed a true copy of said document(s) in a  
13 Federal Express envelope, addressed as follows:

14 ☐ BY FACSIMILE: I caused such documents to be transmitted by facsimile  
15 transmission and mail as indicated above.

16 Michael J. Avenatti, Esq.  
17 GREENE BROILLET & WHEELER,  
18 LLP  
19 100 Wilshire Boulevard, Suite 2100  
20 P.O. Box 2131  
21 Santa Monica, CA 90407-2131  
22 Telephone: (310) 576-1200  
23 Facsimile: (310) 576-1220  
24 Attorneys for Plaintiffs

25 I declare under penalty of perjury under the laws of the State of California that the  
26 above is true and correct.

27 Executed on March 29, 2007 at San Francisco, California.

28   
GLORIA CADENA



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(SPACE BELOW FOR FILING STAMP ONLY)

1 GREENE BROILLET & WHEELER, LLP

LAWYERS

2 100 WILSHIRE BOULEVARD, SUITE 2100

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4 BROWNE GREENE, State Bar No. 38441

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5 ALAN VAN GELDER, State Bar No. 221820

6 Attorneys for Plaintiff

RECEIVED

APR 25 2007

DRINKER BIDDLE  
& REATH LLP

7  
8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN FRANCISCO

11 THOMAS B. GAINES, etc., et al,

12 Plaintiffs,

13 vs.

14 JOHNSON & JOHNSON, et al.,

15 Defendants.

CASE NO. CGC -06-457600

16  
17 PLAINTIFFS' OPPOSITION TO  
18 DEFENDANT'S MOTION TO  
19 COMPEL DISCOVERY AND CROSS  
20 MOTION FOR RELIEF FROM ANY  
21 ALLEGED WAIVER OF  
22 OBJECTIONS; MEMORANDUM OF  
23 POINTS AND AUTHORITIES;  
24 DECLARATION OF MICHAEL J.  
25 AVENATTI; DECLARATION OF  
26 LINDA SHAFFER; EXHIBITS

17 [Filed Concurrently with Plaintiffs'  
18 Response to Defendant's Separate  
19 Statement]

20 Date: May 7, 2007

21 Time: 10:30 a.m.

22 Place: Department 610

23 Judge: Commissioner Bruce E. Chan

24 Complaint Filed: November 3, 2006

25 TO THE COURT AND ALL PARTIES OF RECORD:

26 Plaintiffs hereby submit the following Opposition to Defendant's Motion to Compel  
27 Discovery:

28 1. Plaintiffs timely served verified and signed responses to Defendants requests for  
discovery, thus defeating any argument of waiver of objections.

Plaintiff's Opposition to Defendant's Motion to Compel

1           2. Defense counsel cannot turn a unilateral request for e-mail copies of discovery made  
2 to a paralegal at Plaintiffs' firm into a service agreement between the parties.

3           3. Plaintiff has complied with the Civil Discovery Act in responding to all discovery  
4 responses propounded by Defendants, even providing supplemental information.

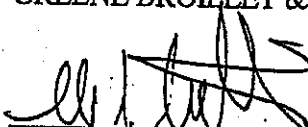
5  
6 PLEASE TAKE FURTHER NOTICE THAT:

7           In the event the Court the Court finds that Plaintiffs' discovery responses were untimely,  
8 Plaintiff hereby seeks relief under California Code of Civil Procedure Sections 2030.290, 2031.300,  
9 and 2033.280 on the grounds of inadvertence, mistake, and excusable neglect. Furthermore, Plaintiff  
10 has already provided responses and Defendants cannot show any prejudice.

11  
12           Plaintiffs' Opposition and Cross-Motion are based on this notice, the attached memorandum  
13 of points and authorities, Plaintiffs' response to Defendants' Separate Statement of Discovery Items  
14 in Dispute, the Declarations of Michael Avenatti and Linda Shaffer, the attached Exhibits, all the  
15 pleadings and court file in this matter, and as any such oral argument and evidence that may be  
16 presented by Plaintiff at hearing on these matters.

17  
18 DATED: April 24, 2007

GREENE BROILLET & WHEELER, LLP

19  
20   
21 Michael J. Avenatti, Esq.  
22 Alan Van Gelder, Esq.  
23 Attorneys for Plaintiff  
24  
25  
26  
27  
28



**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendants (including McKesson Corporation), who are all represented by the same counsel, bring this motion to compel discovery responses on the grounds that they claim they need information as to whether or not McKesson supplied Children's Motrin to Wal-Mart. Defendants argue that they need this information as part of some effort to remove the case from this Court on the grounds that McKesson is somehow a sham Defendant. Of course the irony of this entire situation is that all the Defendants (including McKesson) are represented by the same counsel and are jointly defending the case. If Defendants had the facts necessary to remove the case, those facts are clearly within their own possession, custody, and control. The fact that Defendants have not been able to locate one fact between them to warrant removal of this case is telling. Nothing has stopped McKesson and Wal-Mart from providing this information to their counsel and yet Defendants appear to be unable to muster any facts whatsoever to warrant removal. As such, Defendants appear to have decided to create a controversy where none appears to exist, hoping perhaps to either harass the Plaintiffs, improperly ride on the coat tails of Plaintiffs' counsel own work product, or hope that they can manufacture a removal via some sort of discovery sanction. As discussed below, these efforts are not well taken and are waste of both Plaintiff and this Court's time.

McKesson Corporation is not in this litigation by mistake or in an effort to manufacture venue. The Children's Motrin that killed Plaintiff Thomas Gaines was purchased from Wal-Mart. A simple internet search reveals that McKesson Corporation (the nation's largest distributor of drugs) has had a long standing relationship with Wal-Mart as Wal-Mart's largest and primary supplier of pharmaceuticals. Attached as Exhibit 1 to this motion are true and correct copies of several articles outlining the comprehensive, long-standing relationship between McKesson and Wal-Mart. (Plaintiff has already provided Defendants a copy of these articles). These articles alone establish that Plaintiff has a reasonable basis to believe that McKesson provided Wal-Mart the Children's Motrin that killed Thomas Gaines.

1 **II. PLAINTIFFS' RESPONSES TO DISCOVERY WERE VERIFIED, SIGNED**  
 2 **AND TIMELY**

3 Plaintiffs' responses to Defendants' requests for discovery were due on February 9, 2007.  
 4 Contrary to the assertions of Defendants, on February 9, 2007, Plaintiffs' counsel mailed signed  
 5 and verified responses to the Defendants. True and correct copies of the responses, including  
 6 the verifications and the proofs of service, are attached as Exhibits 2-5.<sup>1</sup>

7 Based on communications Defense counsel had with Plaintiffs' counsel's paralegal Linda  
 8 Shaffer, Defense counsel apparently also expected to be served a copy of the discovery responses  
 9 by either facsimile or e-mail. While the verified and signed copies of the discovery were mailed  
 10 out on February 9, 2007, Ms. Shaffer forgot to e-mail defense counsel a copy of the responses on  
 11 February 9, 2007. When she eventually e-mailed the responses on February 12, 2007, Ms. Shaffer  
 12 accidentally e-mailed the responses directly from the firm's computer system, rather than PDFing  
 13 the responses and signed verifications. As such, the responses that Ms. Shaffer e-mailed to  
 14 Defense counsel on February 12, 2007 did not contain signatures or verifications.

15 Regardless of what Ms. Shaffer e-mailed defense counsel and regardless of when Ms.  
 16 Shaffer e-mailed it to them, the fact remains that Plaintiffs' counsel mailed verified, signed  
 17 responses on February 9, 2007 as the parties had agreed. **Had Defendants bothered to check**  
 18 **their mail and hard copy files before filing this motion, they would have already seen that**  
 19 **they have signed and verified discovery responses.**<sup>2</sup>

20 Pursuant to the terms of California Code of Civil Procedure (CCP) 2016.05 and CCP  
 21 1013, Plaintiff properly served Defendants with verified and signed discovery responses. Under  
 22 the code, mail and hand delivery are the preferred and only methods of service for discovery  
 23 responses. Plaintiff could not even send the responses by facsimile without a prior agreement  
 24 between the parties. (See CCP 1013(e)). There is certainly nothing within CCP 1013 that states  
 25

26 <sup>1</sup> According to Mr. Tom Pulliam, counsel for Defendants, Defendants are no longer claiming  
 27 that the responses were untimely.

28 <sup>2</sup> Defense counsel was provided yet another copy after Plaintiffs received the motion.

1 that e-mail service of discovery documents is proper. More importantly, there is nothing in the  
 2 California Code of Civil Procedure that states that merely because Defense counsel requests that  
 3 copies of the discovery responses be sent by e-mail or facsimile that such a request negates the  
 4 ability of a Plaintiff to serve the responses via mail and that timely mail responses are negated by  
 5 untimely e-mail copies of such responses.

6 In short, there is no controversy here. As the proofs of service on Exhibits 2-5 make  
 7 clear, the responses were placed in the mail on February 9, 2007 and pursuant to the provisions of  
 8 CCP 1013(a), they were deemed served on the date they were placed in the mail.

9  
 10 **III. ALTHOUGH THERE IS NO BASIS TO ARGUE THAT A LATE E-MAIL**  
 11 **RESULTS IN LATE SERVICE, IF THE COURT FINDS A LATE RESPONSE,**  
 12 **PLAINTIFFS SEEK RELIEF UNDER CCP SECTIONS 2030.290(a), 2031.300(a),**  
 13 **2033.280(a)**

14 Plaintiffs contend and have provided proof that timely, verified, and signed responses  
 15 were mailed to Defendants on February 9, 2007. Furthermore, there is no law that suggests that  
 16 failing to e-mail or fax copies of these responses on February 9, 2007 invalidated the timely  
 17 responses that went out in the mail. There is certainly no agreement between the parties to this  
 18 effect, no law for Defendants to rely on in support of such an argument, and Defendants cannot  
 19 demonstrate prejudice as the responses were timely served by mail to an address within the State  
 20 of California. Nonetheless, should this Court find Plaintiffs' responses to be untimely, Plaintiffs  
 21 seek relief under CCP Sections 2030.290, 2031.300, and 2033.280.

22 CCP 2030.290(a) states that the court may relieve Plaintiffs from a claim of untimely  
 23 responses and waiver on its determination that Plaintiffs subsequently served responses in  
 24 substantial compliance with the Civil Discovery Act and if Plaintiffs' "failure to serve a timely  
 25 response was the result of mistake, inadvertence, or excusable neglect."<sup>3</sup>

26  
 27  
 28 <sup>3</sup> The same language and requirements can be found in CCP 2031.300, and 2033.280 with  
 respect to Requests for Production and Requests for Admission.

1 As Exhibits 2-5 have demonstrated, Plaintiffs have served verified and signed responses  
 2 that are in substantial compliance with the Civil Discovery Act. (Defendants have only taken issue  
 3 with a few of the responses in connection with this motion, and while Defendants may not agree  
 4 with the content of the responses, there is no argument that the documents do not constitute  
 5 responses under the Civil Discovery Act.)

6 With respect to the "mistake, inadvertence, or excusable neglect" prong of the code, the  
 7 Declaration of Linda Shaffer more than satisfies this element. The Declaration makes clear that  
 8 Ms. Shaffer meant to e-mail PDF copies of the responses to Defendants on February 9, 2007, but  
 9 forgot, relying instead on her usual practice of making sure the responses go out in the mail.  
 10 Further, the Declarations of Ms. Shaffer and Mr. Avenatti make clear that the Plaintiffs never  
 11 entered into any agreement to substitute e-mail or facsimile service for mail service and that Ms.  
 12 Shaffer had no idea that Defendants would claim waiver or untimeliness if she mailed rather than  
 13 e-mailed or faxed the responses.

14 There is no prejudice here nor is there a violation of the Civil Discovery Act. Even if  
 15 there was such a violation, the facts are clear that such a violation resulted only in Defendants  
 16 receiving the discovery responses in the mail a few days after February 9, 2007, presumably on  
 17 February 12, 2007. There can be no waiver under such circumstances. If the Court finds  
 18 Plaintiffs' responses untimely, the Court should grant Plaintiffs the reliefs afforded under CCP  
 19 sections 2030.290, 2031.300 and 2033.280.

#### 21 **IV. THE PLAINTIFFS' DISCOVERY RESPONSES ARE PROPER**

22 Defendants' motion raises a variety of complaints concerning Plaintiffs' responses to  
 23 discovery. Plaintiffs address the complaints in their Response to Defendants' Separate Statement  
 24 of Discovery Items in Dispute which is being filed concurrently with this Opposition. As  
 25 Plaintiffs' Responses to the Separate Statement of Discovery Items in Dispute reveals, Plaintiff  
 26 responded to each of the requests as written. Furthermore, Plaintiff provided supplemental  
 27 responses in the form of news stories outlining the substantial distribution relationship between  
 28 Wal-Mart and McKesson (which were attached as Exhibit 1).

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1 With respect to Plaintiffs' objections to the discovery, the objections are well taken.  
2 Essentially all requests for discovery suffer from the same basic problem. They do not ask merely  
3 for documents or evidence, they ask for Plaintiffs' counsel to disclose: (a) which documents and  
4 evidence Plaintiffs' counsel believes support Plaintiffs' contentions or allegations, (b) Plaintiffs'  
5 counsel's valuation of which evidence is important and which evidence is not important, and/or (c)  
6 which pieces of evidence Plaintiffs plan to utilize at trial. Asking for the information to be  
7 produced in such a manner is designed to elicit the mental impressions and work product of  
8 Plaintiffs' counsel. Such interrogatories are not about obtaining information likely to lead to  
9 admissible evidence, but rather represent an attempt by Defense counsel to get a look at Plaintiffs'  
10 counsel's "play book." There is nothing relevant or likely to be relevant about what Plaintiffs'  
11 counsel thinks of the information Defendants seek to obtain.

12 It is a violation of the public policy set forth in California *Code of Civil Procedure*  
13 section 2018.020 for Plaintiff to identify information Plaintiffs counsel has gathered that relate to  
14 the issues in the case. California *Code of Civil Procedure* section 2018.020 provides:

15 It is the policy of the state to do both of the following:

- 16 (a) Preserve the rights of attorneys to prepare cases for trial with that degree of  
17 privacy necessary to encourage them to prepare their cases thoroughly and to  
18 investigate not only the favorable but the unfavorable aspects of those cases.  
19 (b) Prevent attorneys from taking undue advantage of their adversary's industry  
20 and efforts.

21 Defendant's are seeking materials and information that plaintiffs' counsel have gathered  
22 using their own industry and efforts to support their clients' claims. Some of the requested  
23 information is equally available to defendants, especially those requests that ask plaintiffs' counsel  
24 to identify and produce documents in defendant's own files. (for example, evidence of sales  
25 between McKesson and Wal-Mart). As will be demonstrated below, these interrogatories seek to  
26 obtain the thoughts and impressions of plaintiffs' counsel and the fruit of plaintiffs' counsel's  
27 labor, all in violation of the public policy set forth in California *Code of Civil Procedure* section  
28 2018.020. Therefore, plaintiffs cannot be forced to identify or provide the requested information  
and materials that their attorneys have gathered.





1 Code of Civil Procedure, Section 2018.030, provides: "Any writing that reflects an  
2 attorney's impressions, conclusions, opinions, or legal research or theories, shall not be  
3 discoverable under any circumstances." The issue before this Court is whether the requested  
4 documents and information consist of attorney work product. "The statute, however, does not  
5 define 'work product'. Thus, the determination of what work product is must be resolved by  
6 individual court determinations on a case by case basis." (*City of Long Beach v. Superior Court*  
7 (1976) 64 Cal.App.3d 65, 71.) What an attorney has learned or thinks is important in preparing  
8 the case is totally outside of the scope and objectives of legitimate discovery. The Supreme Court  
9 in *Hickman v. Taylor* (1947) 329 U.S. 495, 511 recognized that a lawyer in preparing the client's  
10 case, assembles information, sifts through what the lawyer considers to be relevant facts, prepares  
11 legal theories and plans strategy. This work is reflected in tangible and intangible ways and is  
12 called work product. (*Id.*; *See In re Jeanette H.* (1990) 225 Cal.App.3d 25, 32.) The Court  
13 explained the policy reasons for the attorney work product privilege:

14 Were such materials open to opposing counsel on mere demand, much of what is  
15 now put down in writing would remain unwritten. An attorney's thoughts,  
16 heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp  
17 practices would inevitable develop in the giving of legal advice and in the  
18 preparation of cases for trial. The effect on the legal profession would be  
19 demoralizing. And the interests of the clients and the cause of justice would be  
20 poorly served. . . . [T]he general policy against invading the privacy of an  
21 attorney's course of preparation is so well recognized and so essential to an  
22 orderly working of our system of legal procedure that a burden rests on the one  
23 who would invade that privacy to establish adequate reasons to justify  
24 production. (*Id.* at 511-512 (emphasis added).)

25 Whether a request that a party identify and produce information and documents that  
26 counsel believes are relevant to the issues in this case violates the work product rule was addressed  
27 in *Nacht & Lewis Architects, Inc. v Superior Court* (1996) 47 Cal.App.4th 214 and *City of Long*  
28 *Beach v. Superior Court* (1976) 64 Cal.App.3d 65.

29 In *Nacht & Lewis Architects, Inc.*, *supra*, 47 Cal.App.4th at 217, the trial court granted an  
30 order requiring the defendant to identify all persons who had been interviewed by the defendant or  
31 anyone acting on its behalf. The defendant objected to Form Interrogatory No. 12.2, stating that  
32 interviews had been conducted but identification of the witnesses was protected by the  
33 attorney-client privilege and work product doctrine. (*Id.*) The Court of Appeal held that requiring

1 the defendant to provide a list of witnesses interviewed would violate the absolute work product  
2 privilege of Section 2018(c), now Section 2018.030. (*Id.*) That court held as follows:

3 Compelled production of a list of potential witnesses interviewed by  
4 opposing counsel would necessarily reflect counsel's evaluation of the case  
5 by revealing which witnesses or persons who claimed knowledge of the  
6 incident (already identified by defendants' response to interrogatory No.  
7 12.1) counsel deemed important enough to interview. (*Id.*)

8 In *City of Long Beach v. Superior Court* (1976) 64 Cal.App.3d 65 the plaintiff served  
9 interrogatories seeking the names and address of non-expert witnesses the defendant intended to  
10 call at trial and sought the nature of the testimony of each witness. (*Id.* at 69.) The court  
11 specifically held that requiring the defendant to disclose the identity of the witnesses it intended to  
12 call was qualified work product. (*Id.* at 73.) The court further held that the anticipated testimony  
13 was absolutely privileged as work product. (*Id.* at 80.)

14 Plaintiffs' counsel's selection and/or collection of information that counsel deems  
15 important to the lawsuit or "supports his clients' contentions" is also protected work product. In  
16 cases involving extensive document discovery, the selection and compilation of documents is  
17 often more crucial than legal research. (*Shelton v. American Motors Corp.*, 805 F.2d 1323 (8<sup>th</sup> Cir.  
18 1986)(citing *James Julian, Inc. v. Raytheon Co.*, 93 F.R.D. 138, 144 (D.Del.1982).)) "Even if the  
19 individual documents sought are not attorney work product, 'the selection process itself  
20 represents defense counsel's mental impressions and legal opinions as to how the evidence in  
21 the documents relates to the issues and defenses in the litigation.'" (*Smith v. Florida Power &  
22 Light Co.*, 632 So. 2d 696, 698 (Fla. Dist. Ct. App. 1994)(citing *Sporck v. Peil*, 759 F.2d 312, 315  
23 (3d Cir. 1985).)) The selection and compilation of documents by counsel falls within the  
24 highly-protected category of opinion work product. (*Sporck v. Peil*, 759 F.2d 312, 315 (3d Cir.  
25 1985).) Thus, regardless of the jurisdiction, it is clear that in the practice of law, the  
26 selection and compilation of documents is attorney work product that is not discoverable.

27 In the instant case, the Defendants ask that Plaintiffs' counsel be required to review their  
28 files and tell defendant (a) which documents plaintiffs' counsel think support Plaintiffs' claim, (b)  
why Plaintiffs' counsel believes they are important, and (c) which documents Plaintiffs' counsel  
might use at trial. These interrogatories violate the absolute work product privilege in that they

1 improperly seek "an attorney's impressions, conclusions, opinions, or legal research or theories."  
 2 (C.C.P. §2030.030.) An answer to these interrogatories will not clarify Plaintiffs' contentions,  
 3 provide Defendants with facts, or narrow the issues. (*See, e.g., Sheets v. Superior Court* (1967)  
 4 257 Cal.App.2d 1, 13). Rather, these interrogatories are asking Plaintiff to perform qualitative  
 5 analysis and research for the Defendants. (*See id.*) However, Plaintiffs' counsel's selection,  
 6 review, understanding, and compilation of facts and documents is attorney work product. Any  
 7 facts and documents that Plaintiffs' counsel have gathered have been a result of a number of hours  
 8 of work. Defendants should not benefit from the research that plaintiffs' counsel has done.

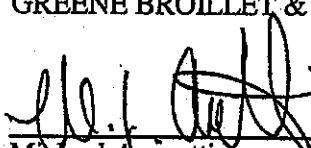
9 In addition, a response to those interrogatories where the Defendants seek treatises,  
 10 periodicals, and publications that Plaintiffs' counsel may have gathered would also reveal  
 11 Plaintiffs' counsel's research. Therefore, pursuant to the attorney work product privilege,  
 12 plaintiffs cannot and should not be compelled to respond to defendant's requests for such  
 13 information.  
 14

# 15 V. CONCLUSION

16 For the above reasons, Defendants' motion must be denied in full.

17  
 18 DATED: April 24, 2007

GREENE BROILLET & WHEELER, LLP

19  
 20   
 21 Michael Avenatti  
 22 Alan Van Gelder  
 23 Attorneys for Plaintiff  
 24  
 25  
 26  
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DECLARATION OF MICHAEL J. AVENATTI

I, Michael J. Avenatti, declare and say that:

I am an attorney at law licensed to practice before all of the courts of the State of California, and am a member of the law firm of Greene Broillet & Wheeler, attorneys of record for plaintiffs Thomas Gaines et al. As such, I have personal knowledge of the facts surrounding the present action and all facts herein stated. If called as a witness, I could testify competently to the following:

1. Attached as Exhibit 1 is a true and correct copy of an e-mail I sent to defense counsel which contains newspaper articles regarding the extensive distribution agreement between McKesson and Wal-Mart.

2. Attached as Exhibits 2-5 are true and correct copies of signed and verified responses to all of the discovery responses that are at issue in Defendants' motion to compel. As the proofs of service for each response indicate, the responses were mailed on February 9, 2007, making them all timely.

3. At no time did myself, any attorney at my office, or any employee of my office enter into an agreement with Defendants that stated that e-mail or facsimile service of the responses attached as Exhibits 2-5 would satisfy the provisions of CCP § 1013 or that e-mail/facsimile service would substitute or nullify mail service of the same responses.

4. I do not believe that Plaintiffs' responses were untimely. However if such responses are deemed untimely, it is the result of mistake, inadvertence, and excusable neglect by my office as well as the failure of defense counsel to properly communicate with my office.

///

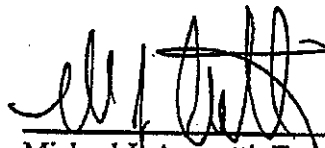
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///

1           5. Defendants have not articulated to me any prejudice that has resulted from receiving  
2 the responses by mail as provided by the CCP.

3  
4           I declare under penalty of perjury under the laws of the State of California that the foregoing  
5 is true and correct.

6  
7           Executed this 24<sup>th</sup> day of April, 2007, at Santa Monica, California.

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10             
11           Michael J. Avenatti, Esq.  
12           Declarant

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GREENE BROILLET & WHEELER, LLP  
P.O. BOX 2131  
SANTA MONICA, CA 90407-2131





DECLARATION OF LINDA SHAFFER

I, Linda Shaffer, declare and say that:

I am employed as a paralegal at the law firm of Greene Broillet & Wheeler, who are attorneys of record for plaintiffs Thomas Gaines et al. As such, I have personal knowledge of the facts surrounding the present action and all facts herein stated. If called as a witness, I could testify competently to the following:

1. Exhibits 2-5 of this motion were mailed by my office on February 9, 2007. They were signed and verified when they were mailed out on that date.

2. It is my normal procedure as well as the normal procedure of Greene Broillet & Wheeler to mail responses to discovery.

3. At the time the discovery responses attached as Exhibits 2-5 were mailed, I had forgotten that Defense counsel had also requested that a copy of the responses be sent out via e-mail or facsimile.

4. At no time did I enter into an agreement with Defendants that stated that e-mail or fax service of the responses attached as Exhibits 2-5 would satisfy the provisions of CCP § 1013 or that e-mail or fax service would substitute or nullify mail service of the same responses.

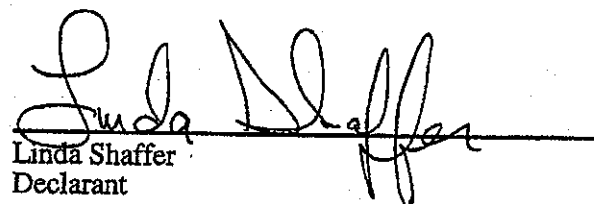
5. As of February 9, 2007, it was my understanding that Defendants merely wanted an electronic version of the discovery responses in addition to hard copy versions of the responses, which is why when I found out that Defense counsel still wanted e-mail versions of the responses, I e-mailed electronic versions of the responses to Defense counsel on February 12, 2007. Because our office had already mailed out signed and verified copies of the responses, I assumed that merely e-mailing the electronic documents directly from the system (which were not signed) would be sufficient.

6. I do not believe that Plaintiffs' responses were untimely. However if such responses are deemed untimely it is the result of mistake, inadvertence, and excusable neglect on my part as well as the failure of defense counsel to properly communicate with me. Had I understood that Defendants would attempt to argue that failure to e-mail or fax signed verified versions of the discovery responses

1 on February 9, 2007 would make them untimely, I would not have followed our office's usual  
2 procedure and would have e-mailed or faxed, as well as mailed, the responses on February 9, 2007.  
3 Furthermore, had Defense counsel been more clear about the consequences Defendants believed  
4 would result from failing to e-mail the responses on February 9, 2007, I would have made an extra  
5 note and taken extra attention to make sure the responses were e-mailed or faxed on February 9, 2007.

6  
7 I declare under penalty of perjury under the laws of the State of California that the foregoing  
8 is true and correct.

9  
10 Executed this 24<sup>th</sup> day of April, 2007, at Santa Monica, California.

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Linda Shaffer  
Declarant

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McKesson, Wal-Mart extend pact / San Francisco company will remain retailer's main supplier of bran... Page 1 of 1

**SFGate.com**

## **McKesson, Wal-Mart extend pact**

### **San Francisco company will remain retailer's main supplier of branded pharmaceuticals**

Bernadette Tansey, Chronicle Staff Writer  
Saturday, November 25, 2006

McKesson Corp., the largest distributor of pharmaceuticals in the United States, said Friday it has renewed a long-standing supply agreement with Wal-Mart Stores, Inc., the world's largest retailer.

The San Francisco company said the agreement maintains its standing as Wal-Mart's primary supplier of branded pharmaceutical products. Details of the agreement were not disclosed, including the terms under which McKesson might continue to supply generic drugs. Wal-Mart recently introduced a price-slashing campaign offering commonly prescribed generics at \$4 for a month's supply.

Target Corp. announced a similar discount program for generic drugs on Monday. Target had renewed its supply contract with McKesson during the quarter ending Sept. 30. Representatives of McKesson, Wal-Mart and Target were not available to discuss the impact of the price-cutting campaigns on McKesson and other distributors of generic drugs.

Wal-Mart, based in Bentonville, Ark., estimates that the 331 drugs now covered by its discount program represent more than 25 percent of the prescriptions filled at its pharmacies nationwide. The company recently said the program is offered at 3,009 pharmacies in 38 states.

In its earnings reports this year, McKesson has pointed to its generics business as a source of increasing profit. McKesson, the largest distributor of generic drugs in North America, said it moves quickly to make generics available to customers once the patents on brand-name drugs expire.

Because patents are expiring on so many expensive drugs, the growth rate of revenue from pharmaceutical distribution is dropping, it said. But profit margins from the increased sales of generic drugs should be higher, McKesson predicted in a May 4 report.

The company reported revenue of \$88.1 billion and net income of \$751 million for its 2006 fiscal year, which ended March 31. On Oct. 31, McKesson raised its estimate of 2007 earnings per share to \$2.65 to \$2.75.

McKesson, whose relationship with Wal-Mart began in 1988, will continue to supply Wal-Mart's mail-order facility and warehouses. It will also continue to provide repackaging services through its RxPak unit.

McKesson shares gained 36 cents to close at \$48.18 on Friday.

*E-mail Bernadette Tansey at [btansey@sfgate.com](mailto:btansey@sfgate.com).*

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/11/25/BUGKOMHBI81.DTL>

This article appeared on page C - 1 of the San Francisco Chronicle

**EXHIBIT |**

<http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2006/11/25/BUGKOMHBI81.DTL&type=printable> 4/10/2007

## McKesson Corporate: McKesson Renews Pharmaceutical Distribution Agreement With Wal-Mart

Page 1 of 1

Home &gt; About Us &gt; Newsroom &gt; Press Releases &gt; 2006

## McKesson Renews Pharmaceutical Distribution Agreement With Wal-Mart

November 24, 2006

SAN FRANCISCO--(BUSINESS WIRE)--McKesson Corporation (NYSE:MCK), the nation's largest pharmaceutical distributor, announced today that it has renewed its comprehensive supply agreement with Wal-Mart Stores, Inc., the largest retailer in the world.

The agreement extends the companies' relationship, which dates back to 1988, and maintains McKesson as the primary supplier of brand pharmaceutical products for Wal-Mart stores across the United States. In addition, McKesson will continue to be a supplier to Wal-Mart's mail order facility and warehouses. McKesson will also continue to provide repackaging services through its RxPak business.

"We are pleased to extend our longstanding and extensive relationship with Wal-Mart," said John Figueroa, President of McKesson Pharmaceuticals, the company's domestic pharmaceutical distribution business unit.

**Risk Factors**

Except for historical information contained in this press release, matters discussed may constitute "forward-looking statements", within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, that involve risks and uncertainties that could cause actual results to differ materially from those projected, anticipated or implied. These statements may be identified by their use of forward-looking terminology such as "believes", "expects", "anticipates", "may", "should", "seeks", "approximates", "intends", "plans", "estimates" or the negative of these words or other comparable terminology. The most significant of these risks and uncertainties are described in the company's Form 10-K, Form 10-Q and Form 8-K reports filed with the Securities and Exchange Commission and include, but are not limited to: adverse resolution of pending shareholder litigation regarding the 1999 restatement of our historical financial statements; the changing U.S. healthcare environment, including changes in government regulations and the impact of potential future mandated benefits; competition; changes in private and governmental reimbursement or in the delivery systems for healthcare products and services; governmental and manufacturers' efforts to regulate or control the pharmaceutical supply chain; changes in pharmaceutical and medical-surgical manufacturers' pricing, selling, inventory, distribution or supply policies or practices; changes in the availability or pricing of generic drugs; changes in customer mix; substantial defaults in payment or a material reduction in purchases by large customers; challenges in integrating and implementing the company's internally used or externally sold software and software systems, or the slowing or deferral of demand or extension of the sales cycle for external software products; continued access to third-party licenses for software and the patent positions of the company's proprietary software; the company's ability to meet performance requirements in its disease management programs; the adequacy of insurance to cover liability or loss claims; new or revised tax legislation; foreign currency fluctuations or disruptions to foreign operations; the company's ability to successfully identify, consummate and integrate strategic acquisitions; changes in generally accepted accounting principles (GAAP) and general economic conditions. The reader should not place undue reliance on forward-looking statements, which speak only as of the date they are made. The company assumes no obligation to update or revise any such statements, whether as a result of new information or otherwise.

**About McKesson**

McKesson Corporation (NYSE:MCK) is a Fortune 15 healthcare services and information technology company dedicated to helping its customers deliver high-quality healthcare by reducing costs, streamlining processes and improving the quality and safety of patient care. Over the course of its 173-year history, McKesson has grown by providing pharmaceutical and medical-surgical supply management across the spectrum of care; healthcare information technology for hospitals, physicians, homecare and payors; hospital and retail pharmacy automation; and services for manufacturers and payors designed to improve outcomes for patients. For more information, visit us at [www.mckesson.com](http://www.mckesson.com).

**About Wal-Mart Stores, Inc.**

Wal-Mart Stores, Inc. operates Wal-Mart discount stores, supercenters, Neighborhood Markets and Sam's Club locations in the United States. The Company operates in Argentina, Brazil, Canada, China, Costa Rica, El Salvador, Guatemala, Honduras, Japan, Mexico, Nicaragua, Puerto Rico and the United Kingdom. The Company's securities are listed on the New York Stock Exchange and NYSE Arca, formerly the Pacific Stock Exchange, under the symbol WMT.

More information about Wal-Mart can be found by visiting [www.walmart.com](http://www.walmart.com). Online merchandise sales are available at [www.walmart.com](http://www.walmart.com).

## McKesson Corporate: McKesson Named a Wal-Mart Supplier of the Year

Page 1 of 1

[Home](#) > [About Us](#) > [Newsroom](#) > [Press Releases](#) > 2002

### McKesson Named a Wal-Mart Supplier of the Year April 15, 2002

Business Editors/Health Writers

SAN FRANCISCO--(BUSINESS WIRE)--April 15, 2002--McKesson Corporation announced today that it has been honored as one of Wal-Mart's "Suppliers of the Year." McKesson was recently honored as Wal-Mart's "Supplier of the Quarter" for improvements in the areas of on-time shipping, performance, innovative programs and partnership.

In addition to the "Supplier of the Year" honor, McKesson was one of 10 suppliers out of more than 1,000 doing business with Wal-Mart that achieved and was recognized for surpassing \$1 billion in 2001.

"The Supplier of the Year honor is reserved for selected suppliers. It singles out the best of the best," said Frank Segrave, vice president of pharmacy for Wal-Mart.

"We are honored to be recognized as one of Wal-Mart's key suppliers," remarked Paul Julian, president, McKesson Supply Solutions. "Our innovation, depth of resources, and commitment of our employees have all contributed to this achievement."

McKesson Corporation is a leading provider of innovative solutions in supply, information and care management through advanced technologies and services that deliver greater return on investment and better patient outcomes for providers, payors, employers and manufacturers. With revenues of \$42 billion for the fiscal year ended March 31, 2001, McKesson ranks #31 in the 2001 Fortune 500. More information about McKesson is available on the company's Website at: [www.mckesson.com](http://www.mckesson.com).

**Alan Van Gelder**

---

**From:** Michael Avenatti  
**Sent:** Tuesday, April 10, 2007 5:17 PM  
**To:** 'Pulliam, Jr., Thomas W.'  
**Cc:** 'Zvoleff, Vernon I.'; 'Conour, Kenneth P.'; 'Holl, Benjamin J.'; 'Sabnis, Cheryl A.'; 'Schneider, Lynn'; 'Smith, Matthew P.'; Alan Van Gelder; Linda Shaffer  
**Subject:** RE: Gaines v. J&J - Deposition of PMK of McKesson  
**Importance:** High

Tom:

As a follow-up to our discussion earlier today, please see the attached.

Thanks,

Michael

-----Original Message-----

**From:** Pulliam, Jr., Thomas W. [mailto:Thomas.Pulliam@dbr.com]  
**Sent:** Tuesday, April 10, 2007 4:45 PM  
**To:** Michael Avenatti  
**Cc:** Zvoleff, Vernon I.; Conour, Kenneth P.; Holl, Benjamin J.; Sabnis, Cheryl A.; Pulliam, Jr., Thomas W.; Schneider, Lynn; Smith, Matthew P.  
**Subject:** RE: Gaines v. J&J - Deposition of PMK of McKesson

as discussed today, I have call in to the lawyer who represents McKesson and will let you know when I have heard from him

Thomas W. Pulliam, Jr.  
**Drinker Biddle & Reath LLP**  
50 Fremont Street, 20th Floor  
San Francisco, CA 94105-2235  
415 591 7570  
415 591 7510 (fax)  
email: thomas.pulliam@dbr.com

---

Disclaimer Required by IRS Rules of Practice:

Any discussion of tax matters contained herein is not intended or written to be used, and cannot be used, for the purpose of avoiding any penalties that may be imposed under Federal tax laws.

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4/24/2007



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Thank you very much.

-----Original Message-----

**From:** Michael Avenatti [mailto:MAvenatti@greene-broillet.com]  
**Sent:** Tuesday, April 10, 2007 12:29 PM  
**To:** Holl, Benjamin J.; Pulliam, Jr., Thomas W.  
**Cc:** Alan Van Gelder; Linda Shaffer  
**Subject:** Gaines v. J&J - Deposition of PMK of McKesson  
**Importance:** High

Dear Counsel:

I write as a professional courtesy in advance of noticing the deposition of the Person(s) Most Knowledgeable at Defendant McKesson regarding the following general subjects:

1. Distribution of Children's Motrin during the time period January 1, 2001 - December 31, 2004.
2. The business relationship between Defendant McKesson and Wal-Mart Stores, Inc. during the time period January 1, 2001 - December 31, 2004.
3. The business relationship between Defendant McKesson and McNeil Consumer & Specialty Pharmaceuticals during the time period January 1, 2001 - December 31, 2004.
4. The business relationship between Defendant McKesson and McNeil-PPC, Inc. during the time period January 1, 2001 - December 31, 2004.
5. The business relationship between Defendant McKesson and Johnson & Johnson during the time period January 1, 2001 - December 31, 2004.
6. Any and all agreements relating to the distribution of drugs or medications to Wal-Mart Stores, Inc. entered into during, or covering any portion of the time period January 1, 2001 - December 31, 2004.

By the close of business Thursday, please provide dates between next April 23 and May 5 on which the PMK(s) is available to be deposed. In the event we do not hear from you, we will have no choice but to unilaterally set the deposition.

Best regards,

Michael

Michael J. Avenatti, Esq.  
Greene Broillet & Wheeler, LLP  
100 Wilshire Boulevard, 21<sup>st</sup> Floor  
Santa Monica, CA 90401  
(310) 576-1200 (tel)  
(949) 887-4118 (cell)  
(310) 576-1220 (fax)

4/24/2007

mavenatti@greene-broillet.com  
[www.greene-broillet.com](http://www.greene-broillet.com)

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4/24/2007

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FAX. (310) 578-1220

(SPACE BELOW FOR FILING STAMP ONLY)

BROWNE GREENE, State Bar No. 38441  
MICHAEL J. AVENATTI, State Bar No. 206929

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO

THOMAS B. GAINES, etc., et al,

Plaintiffs,

vs.

JOHNSON & JOHNSON, et al.,

Defendants.

CASE NO. CGC -06-457600

PLAINTIFFS' RESPONSE TO  
SPECIAL INTERROGATORIES, SET  
ONE

RESPONDING PARTY: Plaintiffs THOMAS B. GAINES, et al.

PROPOUNDING PARTY: Defendants JOHNSON & JOHNSON, et al.

SET NO: ONE (1)

TO DEFENDANTS JOHNSON & JOHNSON, et al., AND TO THEIR ATTORNEYS OF RECORD  
HEREIN:

COME NOW plaintiffs, pursuant to California Code of Civil Procedure, section 2030,  
and hereby provide the following responses, without prejudice to further discovery.

GENERAL OBJECTIONS

A. Plaintiffs object to all of the individual Interrogatories to the extent they call for information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or protection. To the extent that the Interrogatories call for information protected by the attorney-client privilege, the attorney work product doctrine, or other applicable privilege or protection, Plaintiffs hereby claim such privilege and invokes such protection. The fact that Plaintiffs do not specifically object to an individual Interrogatory on the ground that it seeks such privileged or protected information shall not be deemed a waiver of the protection afforded by the attorney-client privilege, the attorney work product doctrine, or other applicable privilege or protection.

B. Plaintiffs object to all of the individual Interrogatories to the extent they purport to impose upon Plaintiffs the burden of furnishing information that is not available to it or that is equally or more readily available to the defendants.

C. Plaintiffs object to all of the individual Interrogatories to the extent they seek information that is not relevant to the subject matter involved in the pending action or reasonably calculated to lead to the discovery of admissible evidence.

D. Plaintiffs object to the Interrogatories, and to each Interrogatory set forth therein, to the extent that they seek the discovery of sensitive and confidential personal and financial information.

E. Plaintiffs object to each and every Interrogatory herein to the extent that it is overly broad, unduly burdensome, and oppressive.

F. Plaintiffs object to each and every Interrogatory herein to the extent that it is vague, ambiguous, or unintelligible.

G. Plaintiffs object to these Interrogatories on the grounds and to the extent that they contain multiple subparts in violation of the Code and California law.

H. The foregoing objections and qualifications apply to the responses contained herein and are incorporated by reference to the extent applicable to the specific responses set forth below as though fully set forth therein. The failure to mention any of the foregoing objections and

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SANTA MONICA, CA 90407-2131

1 qualifications in the specific responses set forth below shall not be deemed a waiver of such objection  
2 or qualification.

3  
4 **SPECIAL INTERROGATORIES AND RESPONSES**

5  
6 **SPECIAL INTERROGATORY NO. 1:**

7 IDENTIFY the PERSON(s) from whom the CHILDREN'S MOTRIN was purchased.

8 (For the purposes of this set of interrogatories, PERSON means a natural person or any  
9 business or governmental entity. For the purposes of this set of interrogatories, "IDENTIFY" with  
10 respect to a PERSON means state the name, present or last known address and present or last  
11 telephone number of the PERSON. For the purposes of this set of interrogatories, "CHILDRENS'  
12 MOTRIN" means the Children's Motrin referred to in Paragraphs 11 and 15 of the COMPLAINT. For  
13 the purposes of this set of interrogatories, "COMPLAINT" means the Complaint for Damages filed  
14 by YOU on November 3, 2006 in San Francisco County Superior Court and assigned Case No. CGC-  
15 06-457600. For the purposes of this set of interrogatories, "YOU" and "YOUR" means the Plaintiffs  
16 and their attorneys, agents, representatives and any other person acting on Plaintiffs' behalf.)

17 **RESPONSE TO SPECIAL INTERROGATORY NO. 1:**

18 It is plaintiffs' best knowledge that the CHILDREN'S MOTRIN was purchased from  
19 WAL-MART, 401 North General Blvd., Lincolnton, NC 28092-3559; (704) 732-3090.

20 Discovery is ongoing and plaintiffs reserve the right to supplement this response.

21  
22 **SPECIAL INTERROGATORY NO. 2:**

23 IDENTIFY the PERSON(s) who purchased the CHILDREN'S MOTRIN from the  
24 PERSON(s) identified in YOUR response to Special Interrogatory No. 1.

25 **RESPONSE TO SPECIAL INTERROGATORY NO. 2:**

26 It is plaintiffs' best knowledge that Diana Gaines is the PERSON who purchased the  
27 CHILDREN'S MOTRIN from Walmart.

28 Discovery is ongoing and plaintiffs reserve the right to supplement this response.

1 **SPECIAL INTERROGATORY NO. 3:**

2 State the lot number of the CHILDREN'S MOTRIN.

3 **RESPONSE TO SPECIAL INTERROGATORY NO. 3:**

4 Plaintiffs threw the CHILDREN'S MOTRIN bottle away and thus do not know the lot  
5 number. Discovery is ongoing and plaintiffs reserve the right to supplement this response.

6  
7 **SPECIAL INTERROGATORY NO. 4:**

8 State the batch number of the CHILDREN'S MOTRIN.

9 **RESPONSE TO SPECIAL INTERROGATORY NO. 4:**

10 Plaintiffs threw the CHILDREN'S MOTRIN bottle away and thus do not know the  
11 batch number. Discovery is ongoing and plaintiffs reserve the right to supplement this response.

12  
13 **SPECIAL INTERROGATORY NO. 5:**

14 State the date the CHILDREN'S MOTRIN was sold to YOU.

15 **RESPONSE TO SPECIAL INTERROGATORY NO. 5:**

16 Plaintiffs do not know the date the CHILDREN'S MOTRIN was sold to them, but their  
17 best estimate is that it was approximately 6 months before September 29, 2004.

18 Discovery is ongoing and plaintiffs reserve the right to supplement this response.

19  
20 **SPECIAL INTERROGATORY NO. 6:**

21 IDENTIFY all DOCUMENTS that evidence the sale of CHILDREN'S MOTRIN to  
22 YOU.

23 (For the purposes of this set of interrogatories, IDENTIFY with respect to a  
24 DOCUMENT means state, to the extent known, the (a) type of DOCUMENT; (b) the subject matter  
25 to which it relates; (c) the date the DOCUMENT was created; (d) the author(s) of the DOCUMENT:  
26 and (e) the recipient(s) of the DOCUMENT.)

27 ///

28 ///

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**RESPONSE TO SPECIAL INTERROGATORY NO. 6:**

Despite a diligent search and reasonable inquiry plaintiffs are unable to locate any DOCUMENTS responsive to this interrogatory. Discovery is ongoing, however, and plaintiffs reserve the right to supplement this response.

**SPECIAL INTERROGATORY NO. 7:**

IDENTIFY the PERSON(s) who has possession of the packaging (including bottles, cartons, vials, boxes or other containers) which contained the CHILDREN'S MOTRIN.

**RESPONSE TO SPECIAL INTERROGATORY NO. 7:**

Plaintiffs threw away the packaging which contained the CHILDREN'S MOTRIN. It is therefore their opinion that no PERSON has possession of it. Discovery is ongoing, however, and plaintiffs reserve the right to supplement this response.

**SPECIAL INTERROGATORY NO. 8:**

IDENTIFY the PERSON(s) who has possession of the remainder of any CHILDREN'S MOTRIN contained in the packaging referred to in Special Interrogatory No. 7 above.

**RESPONSE TO SPECIAL INTERROGATORY NO. 8:**

Plaintiffs threw away the bottle and contents of the CHILDREN'S MOTRIN. It is therefore their opinion that no PERSON has possession of any remaining pills. Discovery is ongoing, however, and plaintiffs reserve the right to supplement this response.

**SPECIAL INTERROGATORY NO. 9:**

IDENTIFY the PERSON(s) who has possession of the labeling (including package inserts, brochures, pamphlets and other documents) that accompanied the CHILDREN'S MOTRIN.

**RESPONSE TO SPECIAL INTERROGATORY NO. 9:**

Plaintiffs threw away the labeling that accompanied the CHILDREN'S MOTRIN. It is therefore their opinion that no PERSON has possession of it. Discovery is ongoing, however, and plaintiffs reserve the right to supplement this response.

**SPECIAL INTERROGATORY NO. 10:**

If YOU no longer have possession, custody or control of the CHILDREN'S MOTRIN (including its bottle, packaging, labeling, and any package insert), IDENTIFY the PERSON(s) who does have possession, custody or control of it.

**RESPONSE TO SPECIAL INTERROGATORY NO. 10:**

Plaintiffs threw away the CHILDREN'S MOTRIN (including its bottle, packaging, labeling and any package insert). It is therefore their opinion that no PERSON has possession of it. Discovery is ongoing, however, and plaintiffs reserve the right to supplement this response.

**SPECIAL INTERROGATORY NO. 11:**

IDENTIFY the PERSON who was the DISTRIBUTOR of the CHILDREN'S MOTRIN.

(The term "DISTRIBUTOR" is used in these interrogatories as it is used in paragraph 9 of the COMPLAINT.)

**RESPONSE TO SPECIAL INTERROGATORY NO. 11:**

To plaintiffs' best knowledge, MCKESSON CORPORATION.

Discovery is ongoing and plaintiffs reserve the right to supplement this response.

**SPECIAL INTERROGATORY NO. 12:**

Set forth all facts upon which YOU rely for YOUR contention that MCKESSON is a proper party to this lawsuit.

(For purposes of this set of interrogatories, "MCKESSON" means McKesson Corporation and any subsidiary or division thereof.)

**RESPONSE TO SPECIAL INTERROGATORY NO. 12:**

Objection: This interrogatory seeks plaintiffs' counsel's work product, legal reasoning, theory, and/or statutory basis supporting a factual contention.

Without waiving this objection, plaintiffs state that MCKESSON was and is the distributor of CHILDREN'S MOTRIN to WAL-MART.

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P.O. BOX 2131  
SANTA MONICA, CA 90407-2131

1 Discovery is ongoing and plaintiffs reserve the right to supplement this response.

2  
3 **SPECIAL INTERROGATORY NO. 13:**

4 Describe all EVIDENCE supporting YOUR contention that MCKESSON is a proper  
5 party to this lawsuit.

6 (For the purposes of this set of interrogatories, "EVIDENCE" means all  
7 DOCUMENTS, testimony, or statements made from personal knowledge of any potential witness. For  
8 the purposes of this set of interrogatories, "DOCUMENTS" means written, printed, typed, or visually  
9 or orally reproduced material of any kind, whether or not privileged, including but not limited to any  
10 and all letters, correspondence, contracts, agreements, bills, orders, receipts, invoices, statements,  
11 records [including but not limited to medical records], books, articles, computer tapes and reports,  
12 press releases, advertising and promotional literature, prints, drawings, plans, photographs, printed  
13 forms, manuals, brochures, lists, publications, videotapes, or other tape recordings, films, microfilm,  
14 and all other writings, including drafts, typings, printings, minutes or copies or reproductions thereof  
15 in the possession, custody, or control of YOU.)

16 **RESPONSE TO SPECIAL INTERROGATORY NO. 13:**

17 Objection: This interrogatory seeks plaintiff's counsel's work product, legal reasoning,  
18 theory, and/or statutory basis supporting a factual contention.

19 Without waiving this objection, plaintiff states that MCKESSON was and is the  
20 distributor of CHILDREN'S MOTRIN to WAL-MART.

21 Discovery is ongoing and plaintiffs reserve the right to supplement this response.

22  
23 **SPECIAL INTERROGATORY NO. 14:**

24 Set forth all facts upon which YOU rely for YOUR contention that WAL-MART is a  
25 proper party to this lawsuit.

26 (For purposes of this set of interrogatories, "WAL-MART" means Wal-Mart Stores,  
27 Inc., and any subsidiary or division thereof.)

28 ///

GREENE BROILLET & WHEELER, LLP  
P.O. BOX 2131  
SANTA MONICA, CA 90407-2131

**RESPONSE TO SPECIAL INTERROGATORY NO. 14:**

Objection: This interrogatory seeks plaintiff's counsel's work product, legal reasoning, theory, and/or statutory basis supporting a factual contention.

Without waiving this objection plaintiffs state that they purchased the CHILDREN'S MOTRIN from WAL-MART.

Discovery is ongoing and plaintiffs reserve the right to supplement this response.

**SPECIAL INTERROGATORY NO. 15:**

Describe all EVIDENCE supporting YOUR contention that WAL-MART is a proper party to this lawsuit.

**RESPONSE TO SPECIAL INTERROGATORY NO. 15:**

Objection: This interrogatory seeks plaintiffs' counsel's work product, legal reasoning, theory, and/or statutory basis supporting a factual contention.

Without waiving this objection, plaintiffs state that they purchased the CHILDREN'S MOTRIN from WAL-MART.

Discovery is ongoing and plaintiffs reserve the right to supplement this response..

**SPECIAL INTERROGATORY NO. 16:**

Set forth all facts upon which YOU rely for YOUR contention that the CHILDREN'S MOTRIN was sold by WAL-MART.

**RESPONSE TO SPECIAL INTERROGATORY NO. 16:**

Plaintiffs cite their personal knowledge that they purchased the CHILDREN'S MOTRIN from WAL-MART.

Discovery is ongoing and plaintiffs reserve the right to supplement this response..

**SPECIAL INTERROGATORY NO. 17:**

Describe all EVIDENCE supporting YOUR contention that the CHILDREN'S MOTRIN was sold by WAL-MART.

**RESPONSE TO SPECIAL INTERROGATORY NO. 17:**

Plaintiffs cite as EVIDENCE their personal knowledge that they purchased the CHILDREN'S MOTRIN from WAL-MART.

Discovery is ongoing and plaintiffs reserve the right to supplement this response..

**SPECIAL INTERROGATORY NO. 18:**

Set forth the facts upon which YOU rely for YOUR contention that the CHILDREN'S MOTRIN was sold by MCKESSON.

**RESPONSE TO SPECIAL INTERROGATORY NO. 18:**

Objection: This interrogatory seeks plaintiffs' counsel's work product, legal reasoning, theory, and/or statutory basis supporting a factual contention.

Without waiving this objection, plaintiffs state that MCKESSON was and is the distributor of CHILDREN'S MOTRIN to WAL-MART.

Discovery is ongoing and plaintiffs reserve the right to supplement this response.

**SPECIAL INTERROGATORY NO. 19:**

Describe all EVIDENCE supporting YOUR contention that the CHILDREN'S MOTRIN was sold by MCKESSON.

**RESPONSE TO SPECIAL INTERROGATORY NO. 19:**

Objection: This interrogatory seeks plaintiffs' counsel's work product, legal reasoning, theory, and/or statutory basis supporting a factual contention.

Without waiving this objection, plaintiffs state that MCKESSON was and is the distributor of CHILDREN'S MOTRIN to WAL-MART.

Discovery is ongoing and plaintiffs reserve the right to supplement this response.

**SPECIAL INTERROGATORY NO. 20:**

Describe the efforts YOU have made to identify the distributor of the CHILDREN'S MOTRIN.

**RESPONSE TO SPECIAL INTERROGATORY NO. 20:**

Objection: This interrogatory seeks plaintiffs' counsel's work product, legal reasoning, theory, and/or statutory basis supporting a factual contention.

Without waiving this objection, plaintiffs state that MCKESSON was and is the distributor of CHILDREN'S MOTRIN to WAL-MART.

Discovery is ongoing and plaintiffs reserve the right to supplement this response.

**SPECIAL INTERROGATORY NO. 21:**

IDENTIFY all PERSONS with knowledge of the efforts YOU have made to identify the distributor of the CHILDREN'S MOTRIN.

**RESPONSE TO SPECIAL INTERROGATORY NO. 21:**

Objection: This interrogatory seeks plaintiffs' counsel's work product, legal reasoning, theory, and/or statutory basis supporting a factual contention.

Without waiving this objection, plaintiffs state that MCKESSON was and is the distributor of CHILDREN'S MOTRIN to WAL-MART.

Discovery is ongoing and plaintiffs reserve the right to supplement this response.

**SPECIAL INTERROGATORY NO. 22:**

Describe all EVIDENCE concerning the efforts YOU have made to identify the distributor of the CHILDREN'S MOTRIN.

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**RESPONSE TO SPECIAL INTERROGATORY NO. 22:**

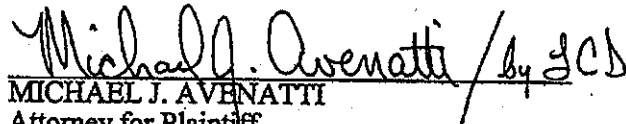
Objection: This interrogatory seeks plaintiffs' counsel's work product, legal reasoning, theory, and/or statutory basis supporting a factual contention.

Without waiving this objection, plaintiffs state that MCKESSON was and is the distributor of CHILDREN'S MOTRIN to WAL-MART.

Discovery is ongoing and plaintiffs reserve the right to supplement this response.

DATED: February 9, 2007

GREENE BROILLET & WHEELER, LLP

  
MICHAEL J. AVENATTI  
Attorney for Plaintiff

GREENE BROILLET & WHEELER, LLP  
P.O. BOX 2131  
SANTA MONICA, CA 90407-2131

VERIFICATION

)  
)  
STATE OF CALIFORNIA )

)  
)  
COUNTY OF SAN FRANCISCO )  
)  
)

I have read the foregoing RESPONSES TO SPECIAL INTERROGATORIES, SET ONE  
PROPOUNDED BY DEFENDANTS, JOHNSON & JOHNSON, et al., and know of its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on 2/9, 2007, at Vale, North Carolina

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Diana L. Gaines (Mother & GAL)  
Type or Print Name

Diana L. Gaines  
Signature

Gary D. Gaines (Father & GAL)  
Type or Print Name

Gary D. Gaines  
Signature

**PROOF OF SERVICE**  
**(C.C.P. 1013A, 2015.5)**

**STATE OF CALIFORNIA**

I am employed in the county of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 100 Wilshire Boulevard, 21st Floor, Santa Monica, California 90401.

On February 9, 2007 I served the foregoing document, described as Plaintiffs' Response to Special Interrogatories, Set One on the interested parties in this action

       by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

  X   by placing   X   the original        a true copy enclosed in sealed envelopes addressed as follows:

Charles F. Preuss, Esq.  
DRINKER BIDDLE & REATH LLP  
50 Fremont St., 20<sup>th</sup> Floor  
San Francisco, CA 94105-2235  
(415) 591-7500

  X   BY MAIL.

       I deposited such envelope in the mail at Santa Monica, California. The envelope was mailed with postage thereon fully prepaid.

  X   As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Santa Monica, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on February 9, 2007 at Santa Monica, California.

       BY PERSONAL SERVICE. I delivered such envelope by hand to the offices of the addressee.

       BY FACSIMILE. I faxed a copy of the above-described document to the interested parties as set forth [above/on the attached mailing list].

Executed on February 9, 2007 at Santa Monica, California.

  X   (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Linda Shaffer  
Name

Linda Shaffer  
Signature

GRÉENE BROILLET & WHEELER, LLP

(SPACE BELOW FOR FILING STAMP ONLY)

LAWYERS  
100 WILSHIRE BOULEVARD, SUITE 2100  
P.O. BOX 2131  
SANTA MONICA, CALIFORNIA 90407-2131  
TEL. (310) 576-1200  
FAX. (310) 576-1220

BROWNE GREENE, State Bar No. 38441  
MICHAEL J. AVENATTI, State Bar No. 206929

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO

THOMAS B. GAINES, et al.,

Plaintiffs,

vs.

JOHNSON & JOHNSON, et al.,

Defendants.

CASE NO. CGC -06-457600

**PLAINTIFFS' RESPONSE TO FORM  
INTERROGATORIES, SET ONE**

RESPONDING PARTY: Plaintiffs THOMAS B. GAINES, et al.

PROPOUNDING PARTY: Defendants JOHNSON & JOHNSON, et al.

SET NO: ONE (1)

TO DEFENDANTS JOHNSON & JOHNSON, et al., AND TO THEIR ATTORNEYS OF RECORD  
HEREIN:

COME NOW plaintiffs, pursuant to California Code of Civil Procedure, section 2030,  
and hereby provide the following responses, without prejudice to further discovery.

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1 qualifications in the specific responses set forth below shall not be deemed a waiver of such objection  
2 or qualification.

3 **FORM INTERROGATORIES AND RESPONSES**

4 17.1 Is your response to each request for admission served with these interrogatories an  
5 unqualified admission? If not, for each response that is not an unqualified admission:

- 6 (a) state the number of the request;  
7 (b) state all facts upon which you base your response;  
8 (c) state the names, ADDRESSES, and telephone numbers of all PERSONS who  
9 have knowledge of those facts; and  
10 (d) identify all DOCUMENTS and other tangible things that support your response  
11 and state the name, ADDRESS, and telephone number of the PERSON who  
12 has each DOCUMENT or thing.

13 **Response to Form Interrogatory 17.1: No.**

- 14 (a) Requests No. One and No. Two;  
15 (b) Plaintiffs purchased the CHILDREN'S MOTRIN from WAL-MART;  
16 (c) Plaintiffs;  
17 (d) Despite a diligent search and reasonable inquiry, plaintiffs are unable to identify  
18 any DOCUMENTS in their possession which would be responsive to this request.

- 19  
20 (a) Requests No. Three and No. Four;  
21 (b)(c)(d)Objection: This interrogatory seeks plaintiffs' counsel's work product, legal  
22 reasoning, theory, and/or statutory basis supporting a factual contention.

23  
24 DATED: February 9, 2007

GREENE BROILLET & WHEELER, LLP

25  
26 *Michael J. Avenatti*  
27 MICHAEL J. AVENATTI  
28 Attorney for Plaintiff

VERIFICATION

)  
)  
STATE OF CALIFORNIA )  
)  
COUNTY OF SAN FRANCISCO )  
)  
)

I have read the foregoing RESPONSES TO FORM INTERROGATORIES, SET ONE,  
PROPOUNDED BY DEFENDANTS, JOHNSON & JOHNSON, et al., and know of its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on 2/9, 2007, at Vale, North Carolina

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Diana L. Gaines (Mother & GAL)  
Type or Print Name

Diana L. Gaines  
Signature

Gary D. Gaines (Father & GAL)  
Type or Print Name

Gary D. Gaines  
Signature



**PROOF OF SERVICE**  
**(C.C.P. 1013A, 2015.5)**

**STATE OF CALIFORNIA**

I am employed in the county of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 100 Wilshire Boulevard, 21st Floor, Santa Monica, California 90401.

On February 9, 2007 I served the foregoing document, described as Plaintiffs' Response to Form Interrogatories, Set One on the interested parties in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

X by placing X the original a true copy enclosed in sealed envelopes addressed as follows:

Charles F. Preuss, Esq.  
DRINKER BIDDLE & REATH LLP  
50 Fremont St., 20<sup>th</sup> Floor  
San Francisco, CA 94105-2235  
(415) 591-7500

X BY MAIL.

I deposited such envelope in the mail at Santa Monica, California. The envelope was mailed with postage thereon fully prepaid.

X As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Santa Monica, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on February 9, 2007 at Santa Monica, California.

BY PERSONAL SERVICE. I delivered such envelope by hand to the offices of the addressee.

BY FACSIMILE. I faxed a copy of the above-described document to the interested parties as set forth [above/on the attached mailing list].

Executed on February 9, 2007 at Santa Monica, California.

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Linda Shaffer  
Name

Linda Shaffer  
Signature

1 GREENE BROILLET & WHEELER, LLP

LAWYERS

2 100 WILSHIRE BOULEVARD, SUITE 2100

P.O. BOX 2131

3 SANTA MONICA, CALIFORNIA 90407-2131

TEL. (310) 576-1200

FAX. (310) 576-1220

4 BROWNE GREENE, State Bar No. 38441

MICHAEL J. AVENATTI, State Bar No. 206929

(SPACE BELOW FOR FILING STAMP ONLY)

5 Attorneys for Plaintiff

6  
7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN FRANCISCO

10  
11 THOMAS B. GAINES, etc., et al,

12 Plaintiffs,

13 vs.

14 JOHNSON & JOHNSON, et al.,

15 Defendants.

CASE NO. CGC -06-457600

PLAINTIFFS' RESPONSE TO  
REQUESTS FOR PRODUCTION, SET  
ONE

16  
17 RESPONDING PARTY: Plaintiffs THOMAS B. GAINES, et al.

18 PROPOUNDING PARTY: Defendants JOHNSON & JOHNSON, et al.

19 SET NO: ONE (1)

20  
21 TO DEFENDANTS JOHNSON & JOHNSON, et al., AND TO THEIR ATTORNEYS OF RECORD  
22 HEREIN:

23  
24 Plaintiffs THOMAS B. GAINES, et al. hereby respond to defendant's REQUESTS  
25 FOR PRODUCTION, SET ONE as follows:

**PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

A. Plaintiffs object to all of the individual Requests to the extent they call for documents/information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or protection. To the extent that the Requests call for document/information protected by the attorney-client privilege, the attorney work product doctrine, or other applicable privilege or protection, Plaintiffs hereby claim such privilege and invokes such protection. The fact that Plaintiffs do not specifically object to an individual request on the ground that it seeks such privileged or protected documents/information shall not be deemed a waiver of the protection afforded by the attorney-client privilege, the attorney work product doctrine, or other applicable privilege or protection.

B. Plaintiffs object to all of the individual Requests to the extent they purport to impose upon Plaintiffs the burden of furnishing documents/information that is not available to it or that is equally or more readily available to the Defendants. Plaintiffs further object to all of the Requests to the extent they purport to require Plaintiffs to re-produce documents/information that Plaintiffs have already produced in this litigation.

C. Plaintiffs object to all of the individual Requests to the extent they seek documents/information that is not relevant to the subject matter involved in the pending action or reasonably calculated to lead to the discovery of admissible evidence.

D. Plaintiffs object to the Requests, and to each Request set forth therein, to the extent that they seek the discovery of sensitive and confidential personal and financial documents/information.

E. Plaintiffs object to each and every Request herein to the extent that it is overly broad, unduly burdensome, and oppressive.

F. Plaintiffs object to each and every Request herein to the extent that it is vague, ambiguous, or unintelligible.

G. Plaintiffs object to these Requests and each Request on the grounds that they are premature and are improper in that they seek to obtain "all documents" relating to

1 Plaintiffs' contentions. Discovery and investigation into the subject matter of this action have just  
2 begun.

3 H. Plaintiffs object to these Requests on the grounds and to the extent that they  
4 are duplicative of each other and/or are duplicative of prior requests for production served by  
5 Defendants.

6 I. Plaintiffs object to all of the individual Requests to the extent they seek to  
7 ascertain documents/information and other data which a consultant expert witness has provided  
8 Plaintiffs in the preparation of this case pursuant to CCP §2034, and, as such, is therefore in  
9 violation of the attorney work product privilege.

10 J. Plaintiffs object to all of the individual Requests to the extent they seek to  
11 ascertain the anticipated testimony of consultant/expert witnesses pursuant to CCP §2034, and, as  
12 such, is therefore in violation of the attorney work product privilege and seeks a premature expert  
13 opinion.

14 K. Except for explicit facts stated herein, no incidental and/or implied  
15 admissions by Plaintiffs are intended by or in any of these responses. The fact that Plaintiffs have  
16 responded to a Request should not be taken as an admission that Plaintiffs accept or admit the  
17 existence of any facts set forth or assumed by such Request. The fact that Plaintiffs have  
18 responded in part to a Request contained herein is not intended and shall not be construed to be a  
19 waiver by Plaintiffs of all or any part of any objection to any Request.

20 L. Plaintiffs are still in the process of locating, collecting, reviewing and  
21 analyzing items and information as referred to in Defendants' Requests and Plaintiffs are  
22 determining whether or not any of said items fall within the scope of said Requests. Accordingly,  
23 if in a response to any Request Plaintiffs indicate that they will produce and permit the inspection  
24 and/or copying of any items, said response should not be deemed to be and is not an admission that  
25 there are any such items in existence, but rather only an indication that if any such items exist,  
26 Plaintiffs will produce them and permit them to be inspected and copied.

27 M. Plaintiffs have not yet completed discovery and investigation for analysis of  
28 matters relating to this case and have not yet completed discovery in preparation for trial.

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P.O. BOX 2131  
SANTA MONICA, CA 90407-2131

1 Consequently, such documents as will be produced in response to Defendants' Requests shall be  
 2 produced without prejudice to Plaintiffs' rights to produce any subsequently discovered  
 3 documents.

4 N. As to any response with respect to which Plaintiffs initially assert an  
 5 objection, and then, without waiving said objection, provide documents/information, the providing  
 6 of said documents/information is solely for the purposes of aiding discovery and demonstrating  
 7 plaintiffs' good-faith efforts to supply information.

8 O. The foregoing objections and qualifications apply to the responses contained  
 9 herein and are incorporated by reference to the extent applicable to the specific responses set forth  
 10 below as though fully set forth therein. The failure to mention any of the foregoing objections and  
 11 qualifications in the specific responses set forth below shall not be deemed a waiver of such  
 12 objection or qualification.

#### 13 REQUESTS FOR PRODUCTION AND RESPONSES

##### 14 REQUEST FOR PRODUCTION NO. 1:

15 All DOCUMENTS described or otherwise identified in YOUR responses to  
 16 Defendants' First Set of Special Interrogatories to Plaintiffs.

17 (For the purposes of this set of requests, "DOCUMENTS" means written, printed,  
 18 typed, or visually or orally reproduced material of any kind, whether or not privileged, including  
 19 but not limited to any and all letters, correspondence, contracts, agreements, bills, orders, receipts,  
 20 invoices, statements, records [including but not limited to medical records], books, articles,  
 21 computer tapes and reports, press releases, advertising and promotional literature, prints, drawings,  
 22 plans, photographs, printed forms, manuals, brochures, lists, publications, videotapes, or other tape  
 23 recordings, films, microfilm, and all other writings, including drafts, typings, printings, minutes or  
 24 copies or reproductions thereof in the possession, custody, or control of YOU. For the purposes of  
 25 this set of requests, "YOU" and "YOUR" means the Plaintiffs and their attorneys, agents,  
 26 representatives and any other person acting on Plaintiffs' behalf.  
 27  
 28

**RESPONSE TO REQUEST NO. 1:**

Plaintiffs did not identify any DOCUMENTS in their responses to Defendant's First Set of Special Interrogatories and, therefore, have nothing responsive to produce at this time.

Discovery is ongoing and plaintiffs reserve the right to supplement this response.

**REQUEST FOR PRODUCTION NO. 2:**

All DOCUMENTS that evidence the sale of the CHILDREN'S MOTRIN to YOU.

(For the purposes of this set of requests, "CHILDREN'S MOTRIN" means the Children's Motrin referred to in Paragraphs 11 and 15 of the COMPLAINT. For the purposes of this set of requests, "COMPLAINT" means the Complaint for Damages filed by YOU on November 3, 2006 in San Francisco County Superior Court and assigned Case No. CGC-06-457600.)

**RESPONSE TO REQUEST NO. 2:**

Despite a diligent search and reasonable inquiry, plaintiffs are unable to locate any DOCUMENTS responsive to this request.

Discovery is ongoing and plaintiffs reserve the right to supplement this response.

**REQUEST FOR PRODUCTION NO. 3:**

All DOCUMENTS that evidence the distribution of the CHILDREN'S MOTRIN by a DISTRIBUTOR.

(The term "DISTRIBUTOR" is used in these requests as it is used in Paragraph 9 of the COMPLAINT.)

**RESPONSE TO REQUEST NO. 3:**

Objection: This request seeks plaintiffs' counsel's work product, legal reasoning, theory, and/or statutory basis supporting a factual contention. Further, all responsive DOCUMENTS should be in the possession, custody or control of Defendants.

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P.O. BOX 2131  
SANTA MONICA, CA 90407-2131



**REQUEST FOR PRODUCTION NO. 4:**

All packaging (including bottles, cartons, vials, boxes or other containers) which contained the CHILDREN'S MOTRIN.

**RESPONSE TO REQUEST NO. 4:**

Despite a diligent search and reasonable inquiry, plaintiffs are unable to locate any items responsive to this request.

Discovery is ongoing and plaintiffs reserve the right to supplement this response.

**REQUEST FOR PRODUCTION NO. 5:**

The remainder of any CHILDREN'S MOTRIN contained in the packaging referred to in Request No. 4 above.

**RESPONSE TO REQUEST NO. 5:**

Despite a diligent search and reasonable inquiry, plaintiffs are unable to locate any items responsive to this request.

Discovery is ongoing and plaintiffs reserve the right to supplement this response.

**REQUEST FOR PRODUCTION NO. 6:**

All labeling (including package inserts, brochures, pamphlets and other documents) that accompanied the CHILDREN'S MOTRIN.

**RESPONSE TO REQUEST NO. 6:**

Despite a diligent search and reasonable inquiry, plaintiffs are unable to locate any items responsive to this request.

Discovery is ongoing and plaintiffs reserve the right to supplement this response.

**REQUEST FOR PRODUCTION NO. 7:**

All DOCUMENTS that reflect the lot number of the CHILDREN'S MOTRIN.

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1 **RESPONSE TO REQUEST NO. 7:**

2 Despite a diligent search and reasonable inquiry, plaintiffs are unable to locate any  
3 DOCUMENTS responsive to this request.

4 Discovery is ongoing and plaintiffs reserve the right to supplement this response.  
5

6 **REQUEST FOR PRODUCTION NO. 8:**

7 All DOCUMENTS that reflect the batch number of the CHILDREN'S MOTRIN.

8 **RESPONSE TO REQUEST NO. 8:**

9 Despite a diligent search and reasonable inquiry, plaintiffs are unable to locate any  
10 DOCUMENTS responsive to this request.  
11

12 **REQUEST FOR PRODUCTION NO. 9:**

13 All DOCUMENTS supporting YOUR contention that MCKESSON is a proper  
14 party to this lawsuit.

15 (For the purposes of this set of requests, "MCKESSON" means McKesson  
16 Corporation and any subsidiary or division thereof.)

17 **RESPONSE TO REQUEST NO. 9:**

18 Objection: This request seeks plaintiffs' counsel's work product, legal reasoning,  
19 theory, and/or statutory basis supporting a factual contention. Further, all responsive  
20 DOCUMENTS should be in the possession, custody or control of Defendants.  
21

22 **REQUEST FOR PRODUCTION NO. 10:**

23 All DOCUMENTS supporting YOUR contention that WAL-MART is a proper  
24 party to this lawsuit.

25 (For purposes of this set of requests, "WAL-MART" means Wal-Mart Stores, Inc.,  
26 and any subsidiary or division thereof.)

27 ///

28 ///

GREENE BROILLET & WHEELER, LLP  
P.O. BOX 2131  
SANTA MONICA, CA 90407-2131

**RESPONSE TO REQUEST NO. 10:**

Objection: This interrogatory seeks plaintiffs' counsel's work product, legal reasoning, theory, and/or statutory basis supporting a factual contention. Further, all responsive DOCUMENTS should be in the possession, custody or control of Defendants.

**REQUEST FOR PRODUCTION NO. 11:**

All DOCUMENTS supporting YOUR contention that the CHILDREN'S MOTRIN was sold by WAL-MART.

**RESPONSE TO REQUEST NO. 11:**

Despite a diligent search and reasonable inquiry, plaintiffs are unable to locate any DOCUMENTS responsive to this request.

Discovery is ongoing and plaintiffs reserve the right to supplement this response.

**REQUEST FOR PRODUCTION NO. 12:**

All DOCUMENTS supporting YOUR contention that the CHILDREN'S MOTRIN was sold by MCKESSON.

**RESPONSE TO REQUEST NO. 12:**

Objection: This interrogatory seeks plaintiffs' counsel's work product, legal reasoning, theory, and/or statutory basis supporting a factual contention. Further, all responsive DOCUMENTS should be in the possession, custody or control of Defendants.

**REQUEST FOR PRODUCTION NO. 13:**

All DOCUMENTS reflecting the efforts YOU have made to identify the DISTRIBUTOR of the CHILDREN'S MOTRIN.

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**RESPONSE TO REQUEST NO. 13:**

Objection: This interrogatory seeks plaintiffs' counsel's work product, legal reasoning, theory, and/or statutory basis supporting a factual contention.

DATED: February 9, 2007

GREENE BROILLET & WHEELER, LLP

  
MICHAEL J. AVENATTI  
Attorney for Plaintiff

GREENE BROILLET & WHEELER, LLP  
P.O. BOX 2131  
SANTA MONICA, CA 90407-2131

VERIFICATION

STATE OF CALIFORNIA )

COUNTY OF SAN FRANCISCO )

I have read the foregoing RESPONSES TO REQUEST FOR PRODUCTION, SET ONE,  
PROPOUNDED BY DEFENDANTS, JOHNSON & JOHNSON, et al. and know of its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on 2/9, 2007, at Vale, North Carolina

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Diana L. Gaines (Mother & GAL)  
Type or Print Name

Diana L. Gaines  
Signature

Gary D. Gaines (Father & GAL)  
Type or Print Name

Gary D. Gaines  
Signature

**PROOF OF SERVICE**  
**(C.C.P. 1013A, 2015.5)**

**STATE OF CALIFORNIA**

I am employed in the county of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 100 Wilshire Boulevard, 21st Floor, Santa Monica, California 90401.

On February 9, 2007 I served the foregoing document, described as Plaintiffs' Response to Request for Production, Set One on the interested parties in this action

\_\_\_ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

X by placing X the original \_\_\_ a true copy enclosed in sealed envelopes addressed as follows:

Charles F. Preuss, Esq.  
DRINKER BIDDLE & REATH LLP  
50 Fremont St., 20<sup>th</sup> Floor  
San Francisco, CA 94105-2235  
(415) 591-7500

X BY MAIL.

\_\_\_ I deposited such envelope in the mail at Santa Monica, California. The envelope was mailed with postage thereon fully prepaid.

X As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Santa Monica, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on February 9, 2007 at Santa Monica, California.

\_\_\_ BY PERSONAL SERVICE. I delivered such envelope by hand to the offices of the addressee.

\_\_\_ BY FACSIMILE. I faxed a copy of the above-described document to the interested parties as set forth [above/on the attached mailing list].

Executed on February 9, 2007 at Santa Monica, California.

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Linda Shaffer  
Name

Linda Shaffer  
Signature

1 GREENE BROILLET & WHEELER, LLP

LAWYERS

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3 SANTA MONICA, CALIFORNIA 90407-2131

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4 BROWNE GREENE, State Bar No. 38441

MICHAEL J. AVENATTI, State Bar No. 206929

(SPACE BELOW FOR FILING STAMP ONLY)

5 Attorneys for Plaintiff

6  
7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN FRANCISCO  
10

11 THOMAS B. GAINES, etc., et al,

12 Plaintiffs,

13 vs.

14 JOHNSON & JOHNSON, et al.,

15 Defendants.  
16

CASE NO. CGC -06-457600

PLAINTIFFS' RESPONSE TO  
REQUESTS FOR ADMISSION, SET  
ONE (1)

17 RESPONDING PARTY: Plaintiffs THOMAS B. GAINES, et al.

18 PROPOUNDING PARTY: Defendants JOHNSON & JOHNSON, et al.

19 SET NO: ONE (1)  
20

21 TO DEFENDANTS, JOHNSON & JOHNSON, et al. AND TO THEIR ATTORNEYS OF RECORD  
22 HEREIN:  
23

24 COME NOW plaintiffs, pursuant to California Code of Civil Procedure, section 2033,  
25 and hereby provide the following responses, without prejudice to further discovery.  
26  
27  
28

**GENERAL OBJECTIONS**

A. Plaintiffs object to all of the individual Requests to the extent they call for information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or protection. To the extent that the Requests call for information protected by the attorney-client privilege, the attorney work product doctrine, or other applicable privilege or protection, Plaintiffs hereby claim such privilege and invokes such protection. The fact that Plaintiffs do not specifically object to an individual Request on the ground that it seeks such privileged or protected information shall not be deemed a waiver of the protection afforded by the attorney-client privilege, the attorney work product doctrine, or other applicable privilege or protection.

B. Plaintiffs object to all of the individual Requests to the extent they purport to impose upon Plaintiffs the burden of furnishing information that is not available to it or that is equally or more readily available to the defendants.

C. Plaintiffs object to all of the individual Requests to the extent they seek information that is not relevant to the subject matter involved in the pending action or reasonably calculated to lead to the discovery of admissible evidence.

D. Plaintiffs object to the Requests, and to each Request set forth therein, to the extent that they seek the discovery of sensitive and confidential personal and financial information.

E. Plaintiffs object to each and every Request herein to the extent that it is overly broad, unduly burdensome, and oppressive.

F. Plaintiffs object to each and every Request herein to the extent that it is vague, ambiguous, or unintelligible.

G. Plaintiffs object to these Requests on the grounds and to the extent that they contain multiple subparts in violation of the Code and California law.

H. The foregoing objections and qualifications apply to the responses contained herein and are incorporated by reference to the extent applicable to the specific responses set forth below as though fully set forth therein. The failure to mention any of the foregoing objections and qualifications in the specific responses set forth below shall not be deemed a waiver of such objection or qualification.



**REQUESTS FOR ADMISSION AND RESPONSES**

**REQUEST NO. 1:**

Admit that the CHILDREN'S MOTRIN was not sold by WAL-MART.

(For purposes of this set of requests, "CHILDREN'S MOTRIN" means the Children's Motrin referred to in Paragraphs 11 and 15 of the COMPLAINT. For the purposes of this set of requests, "COMPLAINT" means the Complaint for Damages filed by YOU on November 3, 2006 in San Francisco County Superior Court and assigned Case No. CGC-06-457600. For purposes of this set of requests, "WAL-MART" means Wal-Mart Stores, Inc. and any subsidiary or division thereof.)

**RESPONSE TO REQUEST NO. 1:**

Denied.

**REQUEST NO. 2:**

Admit that you have no evidence that CHILDREN'S MOTRIN was sold by WAL-MART.

**RESPONSE TO REQUEST NO. 2:**

Denied.

**REQUEST NO. 3:**

Admit that the CHILDREN'S MOTRIN was not sold by MCKESSON.

(For purposes of this set of requests, "MCKESSON" means McKesson Corporation and any subsidiary or division thereof.)

**RESPONSE TO REQUEST NO. 3:**

Plaintiffs object to the term "sold" as being vague and ambiguous. Without waiving this objection - denied.

**REQUEST NO. 4:**

Admit that you have no evidence that the CHILDREN'S MOTRIN was sold by MCKESSON.

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**RESPONSE TO REQUEST NO. 4:**

Plaintiffs object to the term "sold" as being vague and ambiguous. Without waiving this objection - denied.

DATED: February 9, 2007

GREENE BROILLET & WHEELER, LLP

*Michael J. Avenatti / by scs*  
MICHAEL J. AVENATTI  
Attorney for Plaintiff

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